



March 21, 2017

ENGROSSED SENATE BILL No. 346

DIGEST OF SB 346 (Updated March 21, 2017 1:12 pm - DI 113)

Citations Affected: IC 36-1.

Synopsis: Donation of certain local funds to a foundation. Provides that when a county, municipality, or township (unit) donates the proceeds of the sale of a utility or a facility, or the amount of a gift, to a foundation, the unit and the foundation may agree that distribution of the proceeds is governed by the Uniform Prudent Management of Institutional Funds Act (IC 30-2-12). Provides that this authority applies only to the donation of proceeds that occurs after December 31, 2015. Provides that department of local government finance may not reduce a unit's property tax levy because of: (1) the donation of the proceeds of money from the sale of a utility or a facility; (2) a distribution from the endowment to the unit; or (3) a return of the donation to the general fund of the unit. Expands the investment powers of a trust established before 1990 from the proceeds of the sale of a county hospital to be the same as a foundation investing a donation. Specifies requirements of investing.

Effective: Upon passage; July 1, 2017.

Grooms, Ford, Becker, Niezgodski, Houchin

(HOUSE SPONSORS — CLERE, STEMLER, ENGLEMAN)

January 9, 2017, read first time and referred to Committee on Local Government.
January 23, 2017, reported favorably — Do Pass.
January 26, 2017, read second time, amended, ordered engrossed.
January 27, 2017, engrossed.
January 30, 2017, read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

March 7, 2017, read first time and referred to Committee on Ways and Means.
March 21, 2017, amended, reported — Do Pass.

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March 21, 2017

First Regular Session 120th General Assembly (2017)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2016 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 346

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 36-1-14-1, AS AMENDED BY P.L.142-2009,
2 SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 1. (a) This section does not apply to donations
4 of gaming revenue to a public school endowment corporation under
5 IC 20-47-1-3.
6 (b) As used in this section, "gaming revenue" means either of the
7 following:
8 (1) Tax revenue received by a unit under IC 4-33-12-6,
9 IC 4-33-13, or an agreement to share a city's or county's part of
10 the tax revenue.
11 (2) Revenue received by a unit under IC 4-35-8.5 or an agreement
12 to share revenue received by another unit under IC 4-35-8.5.
13 (c) Notwithstanding IC 8-1.5-2-6(d), a unit may donate the proceeds
14 from the sale of a utility or facility or from a grant, a gift, a donation,
15 an endowment, a bequest, a trust, or gaming revenue to a foundation
16 under the following conditions:
17 (1) The foundation is a charitable nonprofit community

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- 1 foundation.
- 2 (2) The foundation retains all rights to the donation, including
- 3 investment powers.
- 4 (3) The foundation agrees to do the following:
- 5 (A) Hold the donation as a permanent endowment.
- 6 (B) Distribute the income from the donation only to the unit as
- 7 directed by resolution of the fiscal body of the unit.
- 8 (C) Return the donation to the general fund of the unit if the
- 9 foundation:
- 10 (i) loses the foundation's status as a public charitable
- 11 organization;
- 12 (ii) is liquidated; or
- 13 (iii) violates any condition of the endowment set by the
- 14 fiscal body of the unit.
- 15 **(d) This subsection applies only to the donation of proceeds**
- 16 **described in subsection (c) that occurs after December 31, 2015.**
- 17 **Notwithstanding subsection (c)(3)(B), the unit and the foundation**
- 18 **may agree that distribution of the proceeds is governed by**
- 19 **IC 30-2-12.**
- 20 **(e) The department of local government finance may not reduce**
- 21 **a unit's property tax levy under IC 6-1.1-18.5 or any other law**
- 22 **because of any of the following:**
- 23 **(1) The donation of the proceeds of money from the sale of a**
- 24 **utility or a facility as provided in this section.**
- 25 **(2) A distribution from the endowment to the unit as provided**
- 26 **in this section.**
- 27 **(3) A return of the donation to the general fund of the unit as**
- 28 **provided in this section.**
- 29 SECTION 2. IC 36-1-14-4 IS ADDED TO THE INDIANA CODE
- 30 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 31 1, 2017]: **Sec. 4. (a) This section applies to a county that before 1990**
- 32 **sold its hospital property and established a trust to hold the**
- 33 **proceeds from the sale.**
- 34 **(b) As used in this section, "trust" refers to a charitable trust**
- 35 **established to hold the proceeds from the sale of a county hospital.**
- 36 **(c) The trustees of a trust shall contract with investment**
- 37 **managers, investment advisors, investment counsel, trust**
- 38 **companies, banks, or other finance professionals to assist the**
- 39 **trustees in an investment program. Money held by the trust must**
- 40 **be invested in accordance with the terms of an investment policy**
- 41 **statement developed by the trustees with an investment advisor**
- 42 **that:**



1 (1) is approved by the trustees; and
2 (2) complies with the diversification, risk management, and
3 other fiduciary requirements common to the management of
4 charitable trusts, including that the funds of the trust must be
5 invested according to the prudent investor rule. However, the
6 investment policy statement may not allow the trust to invest
7 in any investments in which the political subdivision that
8 established the trust is not permitted to invest under the
9 Constitution of the State of Indiana. The investment policy
10 statement must include the limitation on the investment in
11 equities specified in subsection (e).

12 (d) Money held by the trust:

13 (1) may be invested in any legal, marketable securities; and
14 (2) is not subject to any other investment limitations in the
15 law, other than the limitations under this section and the
16 limitations in the investment policy statement.

17 (e) The total amount of the funds invested by a trust in equity
18 securities under this section may not exceed fifty-five percent
19 (55%) of the total value of the portfolio of funds invested by the
20 trust under this section. However:

21 (1) an investment that complies with this subsection when the
22 investment is made remains legal even if a subsequent change
23 in the value of the investment or a change in the value of the
24 total portfolio of funds invested by the trust causes the
25 percentage of investments in equity securities to exceed the
26 fifty-five percent (55%) limit on equity securities; and
27 (2) if the total amount of the funds invested by a trust in
28 equity securities exceeds the fifty-five percent (55%) limit on
29 equity securities because of a change described in subdivision
30 (1), the investments by the trust must be rebalanced to comply
31 with the fifty-five percent (55%) limit on equity investments
32 not later than one hundred twenty (120) days after the equity
33 investments first exceed that limit.

34 (f) The following apply if a trust is established under this
35 section:

36 (1) To the extent that investment income earned on the
37 principal amount of the trust during a calendar year exceeds
38 five percent (5%) of the amount of the principal at the
39 beginning of the calendar year, that excess investment income
40 shall, for purposes of this section, be added to and be
41 considered a part of the principal amount of the trust.

42 (2) An expenditure or transfer of any money that is part of the



1 principal amount of the trust may be made only upon
 2 unanimous approval of the trustees.

3 (3) The trust must be audited annually by an independent
 4 third party auditor.

5 (4) The trustees must meet at least quarterly to receive a
 6 quarterly compliance and performance update from the
 7 investment advisor.

8 (5) Three (3) nonvoting advisors who are officers of different
 9 county designated depositories shall attend the quarterly
 10 meetings in an advisory capacity to assist the trustees:

11 (A) in reviewing the compliance and performance report
 12 from the investment advisor; and

13 (B) in reviewing the annual audit required by subdivision
 14 (3).

15 The three (3) nonvoting advisors may not vote on any action
 16 of the board of trustees. The trustees shall by majority vote
 17 select the three (3) depositories from which the three (3)
 18 nonvoting advisors will be chosen. Each of the three (3)
 19 depositories selected under this subdivision shall select an
 20 officer of the depository to serve as one (1) of the three (3)
 21 nonvoting advisors. Each nonvoting advisor shall serve a term
 22 of three (3) years, and the nonvoting advisor shall continue to
 23 serve until a successor is selected. However, to provide for
 24 staggered terms, the trustees shall provide that the initial
 25 term of one (1) nonvoting advisor is one (1) year, the initial
 26 term of one (1) nonvoting advisor is two (2) years, and the
 27 initial term of one (1) nonvoting advisor is three (3) years. For
 28 purposes of avoiding a conflict of interest, a financial
 29 institution for which a nonvoting advisor is an officer (and
 30 any affiliate of such a financial institution) may not receive a
 31 commission or other compensation for investments made by
 32 the trust under this section.

33 SECTION 3. An emergency is declared for this act.



COMMITTEE REPORT

Madam President: The Senate Committee on Local Government, to which was referred Senate Bill No. 346, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to SB 346 as introduced.)

BUCK, Chairperson

Committee Vote: Yeas 9, Nays 0

 SENATE MOTION

Madam President: I move that Senate Bill 346 be amended to read as follows:

Page 1, line 3, delete "JULY 1, 2017]" and insert "UPON PASSAGE]".

Page 2, after line 28, begin a new paragraph and insert:
 "SECTION 2. **An emergency is declared for this act.**"

(Reference is to SB 346 as printed January 24, 2017.)

GROOMS

 COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred Senate Bill 346, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, between lines 28 and 29, begin a new paragraph and insert:
 "SECTION 2. IC 36-1-14-4 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2017]: **Sec. 4. (a) This section applies to a county that before 1990 sold its hospital property and established a trust to hold the proceeds from the sale.**

(b) As used in this section, "trust" refers to a charitable trust established to hold the proceeds from the sale of a county hospital.

(c) The trustees of a trust shall contract with investment managers, investment advisors, investment counsel, trust companies, banks, or other finance professionals to assist the

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trustees in an investment program. Money held by the trust must be invested in accordance with the terms of an investment policy statement developed by the trustees with an investment advisor that:

- (1) is approved by the trustees; and
- (2) complies with the diversification, risk management, and other fiduciary requirements common to the management of charitable trusts, including that the funds of the trust must be invested according to the prudent investor rule. However, the investment policy statement may not allow the trust to invest in any investments in which the political subdivision that established the trust is not permitted to invest under the Constitution of the State of Indiana. The investment policy statement must include the limitation on the investment in equities specified in subsection (e).

(d) Money held by the trust:

- (1) may be invested in any legal, marketable securities; and
- (2) is not subject to any other investment limitations in the law, other than the limitations under this section and the limitations in the investment policy statement.

(e) The total amount of the funds invested by a trust in equity securities under this section may not exceed fifty-five percent (55%) of the total value of the portfolio of funds invested by the trust under this section. However:

- (1) an investment that complies with this subsection when the investment is made remains legal even if a subsequent change in the value of the investment or a change in the value of the total portfolio of funds invested by the trust causes the percentage of investments in equity securities to exceed the fifty-five percent (55%) limit on equity securities; and
- (2) if the total amount of the funds invested by a trust in equity securities exceeds the fifty-five percent (55%) limit on equity securities because of a change described in subdivision (1), the investments by the trust must be rebalanced to comply with the fifty-five percent (55%) limit on equity investments not later than one hundred twenty (120) days after the equity investments first exceed that limit.

(f) The following apply if a trust is established under this section:

- (1) To the extent that investment income earned on the principal amount of the trust during a calendar year exceeds five percent (5%) of the amount of the principal at the



beginning of the calendar year, that excess investment income shall, for purposes of this section, be added to and be considered a part of the principal amount of the trust.

(2) An expenditure or transfer of any money that is part of the principal amount of the trust may be made only upon unanimous approval of the trustees.

(3) The trust must be audited annually by an independent third party auditor.

(4) The trustees must meet at least quarterly to receive a quarterly compliance and performance update from the investment advisor.

(5) Three (3) nonvoting advisors who are officers of different county designated depositories shall attend the quarterly meetings in an advisory capacity to assist the trustees:

(A) in reviewing the compliance and performance report from the investment advisor; and

(B) in reviewing the annual audit required by subdivision (3).

The three (3) nonvoting advisors may not vote on any action of the board of trustees. The trustees shall by majority vote select the three (3) depositories from which the three (3) nonvoting advisors will be chosen. Each of the three (3) depositories selected under this subdivision shall select an officer of the depository to serve as one (1) of the three (3) nonvoting advisors. Each nonvoting advisor shall serve a term of three (3) years, and the nonvoting advisor shall continue to serve until a successor is selected. However, to provide for staggered terms, the trustees shall provide that the initial term of one (1) nonvoting advisor is one (1) year, the initial term of one (1) nonvoting advisor is two (2) years, and the initial term of one (1) nonvoting advisor is three (3) years. For purposes of avoiding a conflict of interest, a financial institution for which a nonvoting advisor is an officer (and any affiliate of such a financial institution) may not receive a commission or other compensation for investments made by



the trust under this section."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 346 as reprinted January 27, 2017.)

BROWN T

Committee Vote: yeas 20, nays 0.

